

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FT. WORTH DIVISION

2009 FEB 23 PM 3:00

CLERK OF COURT

**JAMES AND CHERYL KILLION,
INDIVIDUALLY AND AS NEXT FRIENDS
OF MATT KILLION, A MINOR**

VS.

**ALBERTA LTD. D/B/A X6 RANCH &
FEEDLOT, AND THOMAS TAYLOR**

Defendants.

4-09 CV-123-Y

CIVIL ACTION NO.

**(Cause No. CV09-0057, removed from
the 415th Judicial District, Parker
County, Texas)**

1.

2691324.1/SP/56446/0111/022309

Killion, a Minor v. Alberta Ltd. d/b/a X6 Ranch & Feedlot and Thomas Taylor." Defendant Alberta Ltd. d/b/a X6 Ranch & Feedlot ("X6") was served with and received Plaintiffs' Original Petition on January 29, 2009. Defendant Thomas Taylor ("Taylor") received the Plaintiffs' Original Petition on February 5, 2009, via certified mail.

2. In accordance with 28 U.S.C. § 1446(b), this Notice of Removal has been filed within thirty (30) days after receipt of citation by Defendants, through service or otherwise, of a copy of Plaintiffs' Original Petition, from which it might have been first ascertained if this Action is one which is removable.

II.

DIVERSITY OF JURISDICTION AS BASIS FOR REMOVAL

3. The present suit is an action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a) and may be removed to this Court by Defendants pursuant to the provisions of 28 U.S.C. § 1441, in that it is a civil action between citizens of different states and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

4. Plaintiffs James and Cheryl Killion, were, at the time of filing of this Action, have been at all times since, and still are residents of the State of Texas. Accordingly, for diversity purposes, Plaintiffs James and Cheryl Killion are citizens of the State of Texas as defined by 28 U.S.C. § 1332. Matt Killion was, at the time of filing of this Action, has been at all times since, and still is a resident of the State of Texas. Accordingly, for diversity purposes, Matt Killion is a citizen of the State of Texas as defined by 28 U.S.C. § 1332 (c)(2).

5. Defendant Thomas Taylor was, at the time of the filing of this Action, has been at all times since, and still is a nonresident of the State of Texas, and is a resident of the Country of Canada and Province of Alberta. Accordingly, for diversity purposes, Thomas Taylor is a citizen of Canada and is not a citizen of the State of Texas as defined by 28 U.S.C. § 1332.

6. Defendant Alberta Ltd. d/b/a X6 Ranch & Feedlot was, at the time of the filing of this Action, has been at all times since, and still is, a corporation, formed under the laws of Alberta, Canada, having its principal place of business now and at the time of the filing of this Action in the Province of Alberta. Accordingly, for diversity purposes, X6 is a citizen of Canada and is not a citizen of the State of Texas as defined by 28 U.S.C. § 1332.

7. There is and was, at all times relevant to this Notice of Removal (including the time of filing of the suit, receipt of Plaintiffs Original Petition, and the filing of this Notice), complete diversity between Plaintiffs and Defendants.

8. Pursuant to 28 U.S.C. § 1332 (a), the amount in controversy in this Action exceeds, exclusive of interest and costs, the sum of \$75,000.00. Plaintiffs' Original Petition alleges that "Plaintiffs damages exceed \$500,000 when considering their respective life expectancies, the severity of the impact, life and death issues, and the extent of damages." See Plaintiffs' Original Petition, Section VI. Therefore, it is apparent that the amount in controversy exceeds the jurisdictional amount of \$75,000.00.

9. All Defendants have consented to the removal of this Action to federal court.

III.

COMPLIANCE WITH PROCEDURAL REQUIREMENTS

10. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is being filed within thirty (30) days after receipt by Defendants of a copy of the first pleading, motion, order, or other paper from which it could be ascertained that the case is one which is removable.

11. Pursuant to 28 U.S.C. § 1441(a), venue of the removed action is proper in this Court because it is in the district and division embracing the place where the state court action is pending.

12. Pursuant to 28 U.S.C. § 1446(d), Defendants have given written notice of filing of this Notice of Removal to Plaintiff and are promptly filing a copy of this Notice of Removal with the Clerk of the 415th District Court, Parker County, Texas.

13. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81.1, attached hereto as Exhibit A is an index of all documents filed in state court in this matter.

14. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81.1, attached hereto as Exhibit B is a copy of the docket sheet in the state court action.

15. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81.1, copies of all process, pleadings, and orders filed in the state court are attached as Exhibit C.

16. Trial has not commenced in the 415th District Court, Parker County, Texas.

IV.

CONCLUSION

17. Because diversity jurisdiction exists over Plaintiffs' claims as set out in Plaintiffs' Original Petition, Defendants desire and are entitled to remove this Cause from state court to the United States District Court for the Northern District of Texas, Fort Worth Division.

WHEREFORE, Defendants respectfully pray that the above-mentioned cause of action now pending in the 415th District Court, Parker County, Texas be removed to this, the United States District Court, Northern District, Fort Worth Division.

DATED: February 23, 2009.

Respectfully submitted,

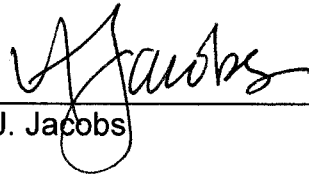


MARK S. SCUDDER
STATE BAR NO. 17936300
ANNIE J. JACOBS
STATE BAR NO. 24050812
STRASBURGER & PRICE, LLP
901 MAIN STREET, SUITE 4400
DALLAS, TX 75202-3794
(214) 651-4300
(214) 651-4330 Fax

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned counsel certifies that on the 23 day of February, 2009, a true and correct copy of the foregoing was forwarded to all known counsel via, certified mail, return receipt requested and facsimile in compliance with the Federal Rules of Civil Procedure.

A handwritten signature in black ink, appearing to read "Annie J. Jacobs", is written over a horizontal line.

Annie J. Jacobs

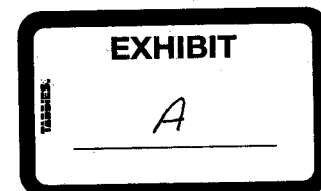
**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

JAMES AND CHERYL KILLION, INDIVIDUALLY AND AS NEXT FRIENDS OF MATT KILLION <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">V.</p> ALBERTA LTD. D/B/A X6 RANCH & FEEDLOT and THOMAS TAYLOR <p style="text-align: center;">Defendants.</p>	§ § § § § § § § § §	CIVIL ACTION NO. _____ (Cause No. CV09-0057, removed from the 415th Judicial District, Parker County, Texas)
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INDEX OF DOCUMENTS

COME NOW Defendants Alberta Ltd d/b/a X6 Ranch & Feedlot and Thomas Taylor ("Defendants"), Defendants in the above matter and submits this Index of Documents filed in the State Court Action, pursuant to Local Rule 81.1(a)(3) of the United States District Court for the Northern District of Texas, and which are attached to Defendant's Notice of Removal:

Tab	Document	Date
1.	Plaintiff's Original Petition and Citation	January 15, 2009
2.	Defendants Alberta Ltd d/b/a X6 Ranch & Feedlot and Thomas Taylor's Original Answer	February 11, 2009
3.	Notice of Filing of Notice of Removal	February 23, 2009



Respectfully submitted,



MARK S. SCUDDER

STATE BAR NO. 17936300

mark.scudder@strasburger.com

ANNIE J. JACOBS

STATE BAR NO. 24050812

annie.jacobs@strasburger.com

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(214) 651-4300

(214) 651-4330 Fax

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing document has been served on the following counsel, via U.S. certified mail, return receipt requested, on February 23, 2009 as follows:

Robert Haslam
Haslam & Gallagher
555 South Summit
Fort Worth, Texas 76104

CMRRR 7107 6719 6320 0059 9440



ANNIE J. JACOBS

CIVIL DOCKET - CAUSE NO. CV09-0057

NAMES OF PARTIES	ATTORNEYS	KIND OF ACTION	DATE OF FILING
JAMES AND CHERYL KILLION, INDIVIDUALLY AND AS NEXT FRIENDS OF MATT KILLION, A MINOR	Robert Haslam 817.332.3115	INJURY/DAMAGE- MOTOR VEHICLE	01/15/2009
vs.			JURY FEE: \$
ALBERTA LTD. DBA X6 RANCH & FEEDLOT, AND THOMAS TAYLOR	<i>Mark Souder - 914-651-4300</i>		PAID BY:

[illegible]

NO. Cv09-0057

JAMES AND CHERYL KILLION,
Individually and as next friends of
MATT KILLION, a Minor

VS.

ALBERTA LTD. dba X6 RANCH
& FEEDLOT, and THOMAS TAYLOR

§
§
§
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§
§
§
§

IN THE DISTRICT COURT OF

PARKER COUNTY, TEXAS

45th JUDICIAL DISTRICT

RECEIVED AND FILED
FOR RECORD

2009 JAN 15 AM 11:45

ELVERA M. J. JUDGE DISTRICT CLERK
PARKER COUNTY, TEXAS

BY [Signature] DEPUTY

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Plaintiffs, JAMES AND CHERYL KILLION, Individually and as Next Friends to MATT KILLION, a Minor, hereinafter referred to as Plaintiffs, complaining of ALBERTA LTD D/B/A X6 RANCH & FEED LOT hereinafter referred to as "ALBERTA LTD" and THOMAS TAYLOR hereinafter referred to as "TAYLOR", and for cause of action, would respectfully show the Court and Jury as follows:

I.

Discovery

1. Discovery is intended to be conducted under Level 3 of T.R.C.P. 190.1.

II.

Parties

2. All Plaintiffs are residents of Parker County.
3. Defendant Thomas Lee Taylor is a resident of Alberta, Canada and can be served with citation by CERTIFIED MAIL, RETURN RECEIPT REQUESTED at 72 Ridge Cres S, W., Medicine Hat, Alberta Canada T1B3M6.
4. Defendant ALBERTA LTD, dba X6 RANCH & FEEDLOT is a company that offices in Canada and operates for profit on United States interstates, highways, and our

EXHIBIT

C

roadways under a U.S. DOT number 1564051 and is may served with citation by serving E. M. POWELL, 3303 MAIN, SUITE 207, HOUSTON, TX 77002.

III.
FACTS

5. On or about the 13th day of July, 2008, Thomas Lee Taylor was operating for profit a semi-truck on Texas highway 199 in Parker County .3 miles west of Springtown.
6. Alberta Ltd hired and paid Thomas Lee Taylor to drive the truck and cargo at the time of the occurrence.
7. Thomas Lee Taylor was an employee of Alberta Ltd at the time of the occurrence as defined by the FMCSR sec. 376.12.
8. Thomas Lee Taylor was operating a truck with a gross vehicle rating of 110,000 pounds and was carrying triple trailer loaded with equipment at the time of the occurrence.
9. Taylor began his trip on this occasion from Canada and was on his way to Louisiana to deliver equipment.
10. As Taylor approached Springtown, he observed Ms. Cheryl Killion slow to prepare to turn on Highway 199.
11. Taylor made the decision to drive in the opposite lane of traffic and attempt to pass Ms. Killion on the left.
12. Ms. Killion attempted to make a left turn into her home driveway and Taylor struck her vehicle causing Ms. Killion's vehicle to roll and fly in the air.
13. James Killion witnessed the vehicle with his wife and child inside became airborne and violently crash immediately after being hit by Taylor's loaded semi -truck.
14. Matt Killion was pulled from the vehicle by emergency personnel and did not know if his

mother was alive.

15. Cheryl Killion was pinned in the car with one of her legs outside the vehicle pinned against the concrete for at least 40 minutes.
16. Officer Ferguson investigated the wreck and spoke with Taylor and with the witnesses to the occurrence.
17. Officer Ferguson cited Taylor with failing to pass to the left safely, citation number TX 085G0DGY001, and Cheryl Killion was not listed or cited as a factor in the occurrence.
18. Cheryl Killion incurred at least \$35,000 in medical bills that were reasonable and necessary to treat the injuries she sustained.
19. James Killion suffered bystander injuries and damages as a result of the occurrence.
20. Two weeks prior to the occurrence Taylor falsified his logs in violation of the USDOT regulations.
21. Alberta Ltd failed to monitor Taylor's logs and allowed him to falsify his logs within 30 days of the occurrence.
22. Alberta Ltd chose not to activate the driver, Taylor's, truck's "black box".
23. Alberta Ltd was unable to download any information on the truck's ECM recording device.
24. Alberta Ltd may not have maintained fuel receipts or other documents as required by the Federal Regulations regarding Taylor's driving history.
25. Witness Ryan Suddeth saw the semi-driver Taylor driving at an excessive speed and out of control immediately prior to striking Ms. Killion's vehicle.

IV.

Negligence of Thomas Lee Taylor

26 On the occasion in question, Thomas Lee Taylor was guilty of one or more of the following acts of negligence and negligence *per se*, among others, which proximately caused the collision in question and the injuries and damages sustained by the Plaintiffs:

- (a) In failing to keep a proper lookout as a person using ordinary care would have done;
- (b) In failing to properly apply his brakes as a person using ordinary care would have done in violation of §545.351 of the Tex. Trans. Code;
- (c) In failing to maintain proper control of his vehicle as a person using ordinary care would have done under the same or similar circumstances;
- (d) In driving at an excessive rate of speed under the circumstances existing in violation of §§545.351, 545.352, and 545.401 of the Tex. Trans. Code;
- (e) Falsifying his log books in violation of section, 395 FMCSR;
- (f) Driving and working in excess of the allowable hours in violation of section 395.3 FMCSR; and more specifically operating out of service at the time of the collision;
- (g) Intentionally and knowingly violating the CDL laws of the State of Texas and the Federal regulations; and
- (h) Failing to pass safely to the left of Ms. Killion at the time of the occurrence.

V.

Negligence of Alberta Ltd. dba X6 Ranch & Feedlot

27. All of the foregoing acts and/or omissions constituted negligence and said negligence *per se* and said negligence was a proximate cause of the occurrence in question and Plaintiff's resulting injuries and damages.

28. In the alternative and in addition, prior to the above described collision the Defendants

were negligent in failing train their driver, Taylor, or in directing him to drive when and where he was traveling at the time of the occurrence.

29. Defendants are also liable for Plaintiff's damages under the doctrine of *Respondent Superior* as Taylor was driving in the course and scope of his employment as established by the Federal Regulations applicable for drivers and transporters like Alberta, Ltd.

Alberta, Ltd. violated at least the following:

- a. 49 C.F.R. 390.3 (knowledge and compliance with the regulations)
- b. 49 C.F.R. 390.11 (requiring observance of regulations)
- c. 49 C.F.R. 395.3 (Hours of service)
- d. 49 C.F.R. 392.6 (scheduling runs in excess of hours)

VI. DAMAGES

Cheryl Killion would show that as a direct and proximate result of the acts and/or omissions of negligence and negligence *per se* aforementioned, was caused to suffer serious and permanent personal injuries to his body, all of which have caused her in the past, and will cause her in the future, physical pain, mental anguish, lost wages and loss of earning capacity, physical impairment, disfigurement, and medical and hospital expenses, for which she should be compensated in accordance with the laws of the State of Texas.

James Killion would show that as a direct and proximate result of the acts and/or omissions of negligence and negligence *per se* aforementioned, he was caused to suffer serious and permanent personal injuries, all of which have caused him in the past, and will cause him in the future, mental anguish, loss of consortium and bystander damages, for which he should be compensated in accordance with the laws of the State of Texas.

Matt Killion would show that as a direct and proximate result of the acts and/or

omissions of negligence and negligence *per se* aforementioned, he was caused to suffer serious and permanent personal injuries to his body, all of which have caused him in the past, pain and suffering, mental anguish and bystander damages and will cause him in the future mental anguish and bystander damages for which he should be compensated in accordance with the laws of the State of Texas.

Plaintiffs damages exceed \$500,000 when considering their respective life expectancies, the severity of the impact, life and death issues, and the extent of damages.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein, and that upon final hearing hereof, Plaintiffs do have and recover Judgment from the Defendants for all damages above set forth, costs of Court, pre-judgment interest at the legal rate of interest as allowed by law, interest on the Judgment at the legal rate of interest from date of Judgment until same is paid, and for such other and further relief, special and general, to which Plaintiffs be entitled, whether at law or in equity.

Respectfully submitted,

ROBERT HASLAM
State Bar No. 09201900

HASLAM & GALLAGHER
555 South Summit
Fort Worth, TX 76104
Telephone: 817/332-3115
Telecopier: 817/332-3148

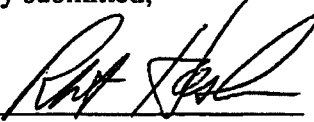
ATTORNEYS FOR PLAINTIFFS

omissions of negligence and negligence *per se* aforementioned, he was caused to suffer serious and permanent personal injuries to his body, all of which have caused him in the past, pain and suffering, mental anguish and bystander damages and will cause him in the future mental anguish and bystander damages for which he should be compensated in accordance with the laws of the State of Texas.

Plaintiffs damages exceed \$500,000 when considering their respective life expectancies, the severity of the impact, life and death issues, and the extent of damages.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein, and that upon final hearing hereof, Plaintiffs do have and recover Judgment from the Defendants for all damages above set forth, costs of Court, pre-judgment interest at the legal rate of interest as allowed by law, interest on the Judgment at the legal rate of interest from date of Judgment until same is paid, and for such other and further relief, special and general, to which Plaintiffs be entitled, whether at law or in equity.

Respectfully submitted,



ROBERT HASLAM
State Bar No. 09201900

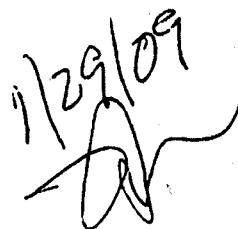
HASLAM & GALLAGHER
555 South Summit
Fort Worth, TX 76104
Telephone: 817/332-3115
Telecopier: 817/332-3148

ATTORNEYS FOR PLAINTIFFS

CITATION

THE STATE OF TEXAS

TO: ALBERTA LTD, dba X6 RANCH & FEEDLOT
By Srvg E.M. Powell
3303 Main, Suite 207
Houston, TX 77002

1/29/09


You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition with the District Clerk, who is the Clerk for the 415th District Court Judicial District Court in and for Parker County on or before 10:00 a.m. on the Monday next following the expiration of twenty days from the date of service hereof, said Court being located on the 1st floor of the District Courts Building, 117 Fort Worth Hwy, Weatherford, Texas. 76086.

NOTICE: YOU HAVE BEEN SUED. YOU MAY EMPLOY AN ATTORNEY. IF YOU OR YOUR ATTORNEY DOES NOT FILE A WRITTEN ANSWER WITH THE CLERK WHO ISSUED THIS CITATION BY 10:00 A.M. ON THE MONDAY NEXT FOLLOWING THE EXPIRATION OF TWENTY DAYS AFTER YOU WERE SERVED THIS CITATION AND PETITION, A DEFAULT JUDGMENT MAY BE TAKEN AGAINST YOU.

The suit is numbered CV09-0057 was filed in the 415th District Court Judicial District Court on January 15th, 2009 and styled JAMES AND CHERYL KILLION, INDIVIDUALLY AND AS NEXT FRIENDS OF MATT KILLION, A MINOR Plaintiff(s)
vs.

ALBERTA LTD, DBA X6 RANCH & FEEDLOT, AND THOMAS TAYLOR Defendant(s)

and being the parties in the suit. The nature of the suit is shown in the copy of the attached petition.

NAME & ADDRESS OF PLAINTIFF ATTORNEY:

ROBERT HASLAM
555 SOUTH SUMMIT
FORT WORTH, TX 76104
817.332.3115

ADDRESS OF District Clerk:
District Courts Building
117 Fort Worth Hwy
PO Box 2050
Weatherford, Texas 76086-2050

WITNESS: ELVERA M. JOHNSON, District Clerk.
Parker County, Texas. Issued and given under my hand and seal of said Court this the

15th day of January 2009.

By 

Deputy



CITATION

OFFICER'S RETURN

Came to hand on the ____ day of _____, 20____ at ____ o'clock __.M. and executed the ____ day of _____, 20____, by delivering to defendant _____ in person, a true copy of this citation with a copy of the petition attached thereto on ____ day of _____ 20____ at ____ o'clock __.M. at _____ in _____ County, Texas.

[] Not executed. The diligence use in finding defendant being _____

[] Information received as to the whereabouts of defendant being _____

Fees \$ _____

By _____ Sheriff/Constable
County, Texas
Deputy.

** Service by rule 106 TRC if directed by attached Court Order

II.
Affirmative Defenses

2. Pleading further, alternatively, and by way of affirmative defense, Defendants would show that the incident in question and Plaintiffs' alleged resulting damages, if any, were the result of negligent acts and/or omissions of others not under the control of Defendants, including Plaintiffs, whose acts or omissions were, alternatively, a proximate cause or a producing cause, or a contributing proximate cause or contributing producing cause or the sole proximate cause or the sole producing cause of the incident in question and any alleged damages stemming therefrom. Defendants, therefore, invoke the doctrine of comparative causation and proportionate responsibility pursuant to Chapter 33 of the Texas Civil Practices & Remedies Code.

3. Further answering, alternatively, and by way of affirmative defense, Defendants would show that in the unlikely event that any liability be found on the part of Defendants, such liability be reduced by the percentage of responsibility and/or causation found to have resulted from the negligence of others, parties and non-parties to this Action.

4. Further, Defendants would show that the incident in question and Plaintiffs' alleged resulting injuries or damages, if any, were the result of an intervening, superseding, or new and independent cause.

5. Further answering, alternatively, and by way of affirmative defense, Defendants deny that they are liable for violation of any statutes and thus deny that it is negligent per se for the following reasons:

- a. The statutes alleged by Plaintiffs do not set forth any duty of care separate and apart from the ordinary duty of care;
- b. Defendants specifically deny having violated any statutes;
- c. Any violation of the statutes did not proximately cause any damage to the Plaintiffs; and
- d. Plaintiffs are not member of the class of persons that the statutes have been designed to protect.

WHEREFORE, PREMISES CONSIDERED, Alberta Ltd. d/b/a X6 Ranch & Feedlot and Thomas Taylor request judgment of this Court that Plaintiffs take nothing in this suit, and that they recover all costs together with such other and further relief to which they may be justly entitled.

Respectfully submitted,



MARK S. SCUDDER
STATE BAR NO. 17936300
ANNIE J. JACOBS
STATE BAR NO. 24050812
STRASBURGER & PRICE, LLP
901 MAIN STREET, SUITE 4400
DALLAS, TX 75202-3794
(214) 651-4300
(214) 651-4330 Fax

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned counsel certifies that on the 9th day of February, 2009, a true and correct copy of the foregoing was forwarded to all known counsel via, certified mail, return receipt requested and facsimile in compliance with Rules 21 and 21a of the Texas Rules of Civil Procedure.



Annie J. Jacobs

CAUSE NO. CV09-0057

JAMES AND CHERYL KILLION, INDIVIDUALLY AND AS NEXT FRIEND OF MATT KILLION	§ § § § § § § § § §	IN THE DISTRICT COURT 415th JUDICIAL DISTRICT OF PARKER COUNTY, TEXAS
Plaintiff,		
vs.		
ALBERTA LTD. D/B/A X6 RANCH & FEEDLOT AND THOMAS TAYLOR		
Defendants.		

NOTICE OF FILING OF NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Please take notice that Defendants Alberta Ltd d/b/a X6 Ranch & Feedlot and Thomas Taylor have filed a Notice of Removal of this Cause to the United States District Court for the Northern District of Texas, Fort Worth Division. A copy of the Notice of Removal is attached to this Notice and is served and filed herewith. Pursuant to 28 U.S.C. § 1446(d), removal is effective with the filing of such notice.

Dated this 23 day of February, 2009.

Respectfully submitted,



MARK S. SCUDDER

State Bar No. 17936300

ANNIE J. JACOBS

State Bar No. 24050812

STRASBURGER & PRICE, LLP

901 Main Street, Suite 4400

Dallas, Texas 75202


(214) 651-4300

(214) 651-4330 (Fax)

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been forwarded to Plaintiff, via Certified Mail, Return Receipt Requested on this 23 day of February, 2009 as follows:



ANNIE J. JACOBS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

Civil Filing Notice - Fort Worth Division

CIVIL ACTION NO: **4 - 0 9 C V - 1 2 3 - Y**

This case has been assigned to District Judge: Means

(Complete if applicable)

TRANSFERRED FROM: _____ DATE FILED: _____

Civil cases are assigned to a judge by random draw. A docket clerk for each judge maintains the recording of documents filed with the Clerk. A complete list of phone numbers for both the judges' chambers and the docket clerks is provided.

Judge	Court Settings	Pleadings Filed
(A) Judge John H. McBRYDE	(817)850-6650	(817)850-6611
Even Cases: 850-6652 Odd Cases: 850-6653		
(Y) Judge Terry R. MEANS	(817)850-6673	(817)850-6612
(BE) Magistrate Judge Charles BLEIL	(817)850-6690	(817)850-6697

For access to local rules, attorney admission information, frequently asked questions, common forms, filing instructions, and records information, please visit our web site at www.txnd.uscourts.gov. To speak to someone in the district clerk's office, please call (817) 850-6601.

To receive electronic access to court docket sheets and filed documents, contact the PACER Service Center at www.pacer.pcs.uscourts.gov or by phone at 1-800-676-6856 for a log-in and password.

7/11/09

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

James and Cheryl Killion, individually and as next friends of Matt Killion, a minor

DEFENDANTS

Alberta Ltd. d/b/a X6 Ranch & Feedlot & Thomas Taylor

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Parker County, Texas

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Alberta, Canada

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Robert Haslam
Haslam & Gallagher
555 South Summit
Fort Worth, Texas 76104
(817) 332-3115

ATTORNEYS (IF KNOWN)

Mark S. Scudder
Annie J. Jacobs
Strasburger & Price, LLP
901 Main Street, Suite 4400
Dallas, Texas 75202,
(214) 651-4300

4-09 CV-123-Y

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input checked="" type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL PROPERTY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Law <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patents <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lund (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environment Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ref. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 RS - Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Defendants remove this case based on diversity pursuant to 28 U.S.C. §1332.

Plaintiffs have brought claims including negligence, negligence per se and respondeat superior.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND

Damages in excess of \$500,000.00

CHECK YES only if demanded in complaint

JURY DEMAND: YES ☐ NO ☒

VIII. RELATED CASE(S) IF ANY:

(See instructions):

None

JUDGE

DOCKET NUMBER

DATE Feb 23, 2009

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

080160

AMOUNT

\$350

APPLYING IFP

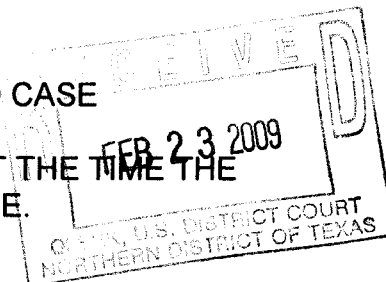
JUDGE

MAG. JUDGE

JS 44 Reverse (Rev. 12/96)

SUPPLEMENTAL CIVIL COVER SHEET FOR A REMOVED CASE

THIS FORM MUST BE ATTACHED TO THE CIVIL COVER SHEET AT THE TIME THE CASE IS FILED IN THE UNITED STATES DISTRICT CLERK'S OFFICE. ADDITIONAL SHEETS MAY BE USED AS NECESSARY.

**4-09 CV-123-Y**

1. STATE COURT INFORMATION:

Please identify the Court from which the case is being removed and specify the number assigned to the case in that court.

COURTCASE NUMBER

415th Judicial District Court, Parker County, TX

CV09-0057

2. STYLE OF CASE: *James and Cheryl Killion, individually and as next friends of Matt Killion, a Minor v. Alberta Ltd. d/b/a X6 Ranch & Feedlot and Thomas Taylor*

Please include all plaintiffs, defendants, intervenors, counterclaims, cross-claims and third-party claims still remaining in the case and indicate their party type. Also please list the attorney(s) of record for each party named, and include the attorney's bar number, firm name, correct mailing address, and telephone number (including area code).

PARTY/PARTY TYPEATTORNEY(S):

James and Cheryl Killion, Individually and as next friends of Matt Killion, a minor	Robert Haslam State Bar No. 09201900 Haslam & Gallagher 555 South Summit Fort Worth, Texas 76104 (817) 332-3115
Alberta Ltd. d/b/a X6 Ranch & Feedlot and Thomas Taylor	Mark S. Scudder State Bar No. 17936300 Annie J. Jacobs State Bar No. 24050812 Strasburger & Price, LLP 901 Main Street, Suite 4400 Dallas, Texas 75202 (214) 651-4300

3. JURY DEMAND:

Was jury demand made in state court: Yes No X

If "yes," by which party and on what date?

Party

Date:

4. ANSWER:

Was an Answer made in state court: Yes X No

If "yes," by which party and on what date?

PARTY

DATE

Alberta Ltd. d/b/a X6 Ranch & Feedlot and Thomas Taylor 02/09/09

5. UNSERVED PARTIES:

The following parties have not been served at the time this case was removed:

PARTY

REASON(S) FOR NO SERVICE

None

6. NONSUITED, DISMISSED OR TERMINATED PARTIES:

Please indicate any changes from the style on the State Court papers and the reason for that change:

PARTY

REASON

None

Not applicable

7. CLAIMS OF THE PARTIES:

This filing party submits the following summary of the remaining claims of each party in the litigation:

PARTY

CLAIM(S)

James and Cheryl Killion,
individually and as next friends
of Matt Killion, a minor

The Plaintiffs claim negligence and
negligence per se on the part of
Defendants, and that the alleged
negligence was the proximate cause of
Plaintiffs' damages.

Alberta Ltd. d/b/a X6 Ranch &
Feedlot

Defendants deny Plaintiffs' claims and
claim the accident and related damages, if
any, were caused by the negligence of
others, including Plaintiff Cheryl Killion,
over whom Defendants had no control.